

MEMORANDUM

Agenda Item No. 4(H)

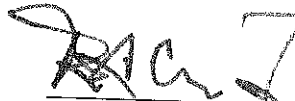
TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: May 7, 2013

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Ordinance amending Chapter 29
of the Code to impose and levy
and additional one percent (1%)
Tourist Development Room Tax

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.



R. A. Cuevas, Jr.
County Attorney

RAC/jls




MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

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SUBJECT: Agenda Item No.4(H)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required



Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(H)

5-7-13

ORDINANCE NO. _____

ORDINANCE AMENDING CHAPTER 29 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO IMPOSE AND LEVY AN ADDITIONAL ONE PERCENT (1%) TOURIST DEVELOPMENT ROOM TAX THROUGHOUT MIAMI-DADE COUNTY, EXCEPT WITHIN THE MUNICIPAL LIMITS OF MIAMI BEACH, BAL HARBOUR AND SURFSIDE, PURSUANT TO THE FLORIDA LOCAL OPTION TOURIST DEVELOPMENT ACT, AS AMENDED, SECTION 125.0104, FLORIDA STATUTES; PROVIDING FOR COLLECTION, ENFORCEMENT, PENALTIES AND DISPOSITION OF REVENUES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, the County currently levies and collects a two percent (2%) tourist development room tax and a one percent (1%) professional sports franchise facility tax on transient lodging; and

WHEREAS, currently before the Florida legislature is a proposed amendment to the Florida Local Option Tourist Development Act to permit counties already imposing a tourist development room tax to impose an additional one percent (1%) tax on transient lodging accommodations, for the purpose of paying debt service on bonds issued to finance, among other things, the renovation of a professional sports franchise facility; and

WHEREAS, this Board finds that it will enhance and promote Miami-Dade County tourism to impose an additional one percent (1%) tourist development room tax to obtain revenues to, among other authorized uses, renovate a professional sports franchise facility,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 29-54 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 29-54. Disposition of revenues; review of expenditures.

* * *

>>(e) Additional Tourist Development Room Tax.

(1) Collections received by the Tax Collector from the tourist development room tax levied under Section 29-58, less costs of administration, are to be deposited in the "Miami-Dade County Additional Tourist Development Room Tax Trust Fund" herewith established and shall be used to:

1. Pay the debt service on bonds issued to finance:

a. The construction, reconstruction, or renovation of a facility that is publicly owned and operated or is publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred before the issuance of such bonds for a new professional sports franchise as defined in Section 288.1162, Florida Statutes.

b. The acquisition, construction, reconstruction, or renovation of a facility publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred before the issuance of such bonds for a retained spring training franchise.

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

2. Pay the debt service on bonds issued to finance the renovation of a professional sports franchise facility that is publicly owned or located on land that is publicly owned and that is publicly operated or operated by the owner of a professional sports franchise or other lessee who has sufficient expertise or financial capability to operate the facility, and to pay the planning and design costs incurred before the issuance of such bonds for the renovated professional sports facility. The cost to renovate the facility must be more than \$300 million, including permitting, architectural, and engineering fees, and at least a majority of the total construction cost, exclusive of in-kind contributions, must be paid for by the ownership group of the professional sports franchise or other private sources. Tax revenues available to pay debt service on bonds may be used to pay for operation and maintenance costs of the facility.

3. Promote and advertise tourism in the State of Florida and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.

(2) Notwithstanding the foregoing, the County may not expend any ad valorem tax revenues for the acquisition, construction, reconstruction, or renovation of a facility for which tax revenues are used pursuant to subparagraph 1 above.<<

Section 2. Section 29-57 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 29-57. Effective Date.

That part of this article pertaining to the tourist development room tax >>levied pursuant to Section 29-51<< shall become effective the first day of the month following its being approved at referendum. >>Section 29-54(e)(1)2. pertaining to the

use of the additional tourist development room tax shall become effective the first day of the month following approval of the use by a majority vote of the electors voting in a referendum.<<

Section 3. Section 29-58 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

>>Sec. 29-58. Levy and imposition of additional one percent tourist development room tax pursuant to Section 125.0104(3)(n), Florida Statutes.

- (a) There shall be levied and imposed throughout the incorporated and unincorporated areas of Miami-Dade County, Florida, except within the municipal limits of Miami Beach, Bal Harbour and Surfside an additional tourist development room tax. The additional tourist development room tax shall be imposed at a rate of one (1) percent of each dollar and major fraction of each dollar of the total consideration charged every person who rents, leases or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, rooming house, mobile home park, recreational vehicle park condominium, or timeshare resort for a term of six (6) months or less. Tax shall be due on the consideration paid for occupancy in the County, except within the municipal limits of Miami Beach, Bal Harbour and Surfside, pursuant to a regulated short-term product, as defined in Section 721.05, Florida Statutes, or occupancy in the County, except within the municipal limits of Miami Beach, Bal Harbour and Surfside, pursuant to a product that would be deemed a regulated short-term product if the agreement to purchase the short-term right were executed in this state. Such tax shall be collected on the last day of occupancy unless such consideration is applied to the purchase of a timeshare estate. The occupancy of an accommodation of a timeshare resort pursuant to a timeshare plan, a multisite timeshare plan, or an exchange transaction in an exchange program,

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as defined in Section 721.05, Florida Statutes, by the owner of a timeshare interest of such owner's guest, which guest is not paying monetary consideration to the owner or to a third party for the benefit of the owner, is not a privilege subject to taxation under this section. A membership or transaction fee paid by a timeshare owner that does not provide the timeshare owner with the right to occupy any specific timeshare unit but merely provides the timeshare owner with the opportunity to exchange a timeshare interest through an exchange program is a service charge and not subject to taxation under this section. Consideration paid for the purchase of a timeshare license in a timeshare plan, as defined in Section 721.05, Florida Statutes, is rent subject to taxation under this section. When receipt of consideration is by way of property other than money, the tax shall be levied and imposed on the fair market value of such nonmonetary consideration. An oral lease, payable weekly, monthly or otherwise, shall not be subject to the tax where the tenant occupies a residential unit located in a facility in which the residential units are leased primarily as permanent residences. Living quarters or accommodations which are exempt according to the provisions of Chapter 212, Florida Statutes, shall also not be subject to the tax.

- (b) The additional tourist development room tax shall be in addition to any other tax imposed pursuant to Chapter 212, Florida Statutes, and in addition to all other taxes and fees and the consideration for the rental or lease of living quarters or accommodations or for the purchase of food, beverages and alcoholic beverages from the establishments described in Section 29-51.
- (c) The additional tourist development room tax shall be charged by the person receiving the consideration for the lease or rental, and it shall be collected from the lessee, tenant or customer at the time of payment of the consideration for such lease or rental.<<

Section 4. Section 29-58.1 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

>>Sec. 29-58.1. Remittance and administration of additional tourist development room tax.

The person receiving the consideration for rentals and leases taxable under Section 29-58 shall receive, account for, and remit the tax to the Miami-Dade County Tax Collector in accordance with the following procedure:

- (a) The taxes levied hereunder shall be due and payable monthly on the first day of each month, and for the purpose of ascertaining the amount of tax payable under Section 29-58, it shall be the duty of all lessors to make a return, on or before the twentieth day of the month, to the County Tax Collector, upon forms prepared and furnished by the County, showing all rentals during the preceding calendar month; however, the County may authorize a quarterly return and payment when the tax remitted by the lessor for the preceding quarter did not exceed twenty-five dollars (\$25.00). The County or its designated agent shall accept returns if postmarked on or before the twentieth day of the month; if the twentieth day falls on a Saturday, Sunday, or federal or State legal holiday, returns shall be accepted if postmarked on the next succeeding work day. Each lessor shall file a return for each tax period even though no tax is due for such period.
- (b) The same duties, privileges, enforcement procedures and penalties imposed by Chapter 212, Florida Statutes, upon dealers in tangible property respecting the remission and collection of tax, the making of returns, the keeping of books, records and accounts, and compliance with the rules of the Florida Department of Revenue in the administration of said chapter, to the extent that such provisions of said Florida Statutes and Department of Revenue regulations are not in conflict with the provisions of this article, shall apply

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to and be binding upon all persons and entities who are subject to the provisions of this article.

- (c)(1) Every lessor upon whose premises the additional tourist development room tax is levied under Section 29-58 shall have the duty to maintain adequate records to show gross collections from all such taxable transactions and the amount of tax due and paid hereunder. It shall be their duty, moreover, to keep and preserve, for a period of three (3) years, all invoices and other records of leases and rentals under Section 29-58, and all such books, invoices, and other records shall be open to examination at all reasonable hours to the County or its designated agent.
- (2) For the purpose of this subsection, if a lessor or other person collecting the taxes under Section 29-58 does not have adequate records of his rentals, the County or its designated agent, may, upon the basis of test or sampling of the lessor's or person's available records or other information relating to the rentals made by such lessor or person, for a representative period, determine the proportion that taxable transactions bear to total transactions. This subsection does not affect the duty of any lessor or person to collect, or the liability of any tenant or purchaser to pay, any tax imposed by or pursuant to Section 29-58.
- (3) If the records of a lessor or other person collecting the taxes under this article are adequate but voluminous in nature and substance, the County or its designated agent may statistically sample such records and project the audit findings derived therefrom over the entire audit period to determine the proportion that taxable transaction amounts bear to total transaction amounts, provided, the lessor or other person and the County have entered into an agreement which provided for the use of statistical sampling and projections and the means and methods to be used. The agreement shall be binding on the lessor or person and the County.

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- (d)(1) The County is authorized to audit or inspect the records and accounts of such lessors and persons and correct by credit any overpayment of tax; and, in the event of a deficiency, an assessment shall be made and collected. No administrative finding of fact is necessary prior to the assessment of any tax deficiency.
- (2) In the event any lessor or person charged herein fails or refuses to make his records available for inspection so that no audit or examination has been made of the books and records of such lessor or person, fails or refuses to register as a lessor or other person collecting the taxes under this article, or fails to make a report and pay the taxes as provided by this article, or makes a grossly incorrect report, or makes a report that is false or fraudulent, then, in such event, it shall be the duty of the County to make an assessment from an estimate based upon the best information then available to it for the taxable period of retail sales of such lessor or other person collecting the taxes, together with interest plus penalty, if such have accrued. Then the County shall proceed to collect such taxes, interest, and penalty on the basis of such assessment, which shall be considered prima facie correct; and the burden to show the contrary shall rest upon the lessor or other person collecting the taxes.<<

Section 5. Section 29-58.2 of the Code of Miami-Dade County, Florida, is hereby

created to read as follows:

>>Sec. 29-58.2. Tax Collector's powers and duties related to the additional tourist development room tax.

The Tax Collector shall maintain accurate books, records and accounts reflecting the collection, administration and disbursement of the taxes levied and imposed under Section 29-58. The Tax Collector shall prescribe and publish such forms as may be necessary to effectuate the local collection of the additional tourist development room tax. For the purpose of collecting the additional tourist development room tax, the Tax Collector shall have the same duties and powers as those vested in the Florida Department of Revenue under Chapter 212, Florida Statutes.<<

Section 6. Section 29-58.3 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

>>**Sec. 29-58.3.** **Costs of administration related to additional tourist development room tax.**

The Tax Collector may retain a portion of the taxes collected for costs of administration in an amount not to exceed three (3) percent of collections.<<

Section 7. Section 29-58.4 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

>>**Sec. 29-58.4.** **Dealer's credit related to additional tourist development room tax.**

The same duties and privileges imposed upon dealers by Chapter 212, Florida Statutes, apply under this article. To compensate dealers for keeping of prescribed records and the proper accounting and remitting of taxes by them, dealers shall be allowed three (3) percent of the first one thousand dollars (\$1,000.00) of the amount of taxes due and accounted for and remitted to the Tax Collector and one percent of all amounts in excess of one thousand dollars (\$1,000.00) on each tax return to the Tax Collector. The collection allowance may not be granted nor may any deduction be permitted, if the tax is delinquent at the time of payment. The Tax Collector may reduce the collection allowance by ten (10) percent or fifty dollars (\$50.00), whichever is less, if taxpayer files an incomplete return.<<

Section 8. Section 29-58.5 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

>>**Sec. 29-58.5.** **Procedures for confidentiality related to additional tourist development room tax.**

All information contained in returns, reports, accounts, or declarations received from dealers, and from the Department of Revenue, including investigative reports and information, is confidential except for official purposes and subject to the provisions of Section 213.053, Florida Statutes. Miami-Dade

County and its officers and employees having access to information regarding the additional tourist development room tax shall accord such information, documents, names, and addresses, the same confidentiality as required by said statute. All Miami-Dade County officers and employees having access shall be made aware of those requirements and the penalties for their violation.<<

Section 9. Section 29-58.6 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

>>Sec. 29-58.6. Enforcement of additional tourist development room tax collections.

(a) Failure to charge and collect tax. Any person who is taxable under Section 29-58 who fails or refuses to charge and collect from the person paying any rental or lease the taxes herein provided, either by himself or through his agents or employees, shall be, in addition to being personally liable for the payment of the tax, guilty of a violation of the second degree, punishable as provided in Section 775.082, Section 775.083 or Section 775.084, Florida Statutes. Each occasion upon which such person fails to charge and collect the taxes herein provided shall constitute a separate offense.

(b) Advertisement or holding out to public that tax not required to be paid by renter or lessee, etc. No person shall advertise or hold out to the public in any manner, directly or indirectly, that he will absorb all or any part of the taxes herein provided, or that he will relieve the person paying for a rental or lease of the payment of all or any part of the tax, or that the tax will not be added to the rental or lease consideration, or when added, that it or any part thereof will be refunded or refused, either directly or indirectly, by any method whatsoever. Any person who willfully violates any provision of this subsection shall be guilty of a violation of the second degree, punishable as provided in Section 775.082, Section 775.083 or Section 775.084, Florida Statutes.

(c) Lien status of levy. The additional tourist development room tax hereby levied shall constitute a lien on the property of the lessee, customer, or tenant in the same manner as, and shall be collectible as are, liens authorized and imposed by Sections 713.67, 713.68 and 713.69, Florida Statutes.<<

Section 10. Section 29-58.7 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

>>Sec. 29-58.7. **Effective date of levy of additional tourist development room tax.**

The effective date of the levy and imposition of the additional tourist development room tax authorized under Section 29-58 shall be the first day of the second month following the effective date of the ordinance levying the tax.<<

Section 11. This ordinance shall become effective upon the occurrence of all of the following: the Florida legislature enacts SB 306, HB 135 or similar legislation before the current legislature session is adjourned and becomes law authorizing the County to levy an additional tourist development room tax as set forth herein.

Section 12. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 13. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 14. The County Mayor or his designee is hereby directed to furnish a certified copy of this ordinance to the Department of Revenue within ten (10) days after its approval.

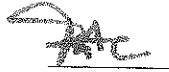
Section 15. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board, provided that by that date all of the conditions set forth in Section 11 above have been satisfied, and if not, by such later date as all of such conditions are satisfied.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

A handwritten signature in dark ink, appearing to be "AAC", written over a horizontal line.

Prepared by:

A handwritten signature in dark ink, appearing to be "AAC", written over a horizontal line.

Geri Bonzon-Keenan

Prime Sponsor: Commissioner Barbara J. Jordan